APPENDIX.

ATKINSON v. DIXIE GREYHOUND LINES, INC.

125 F. 2d 237

McCORD, *Circuit Judge:*

Lamar C. Atkinson brought suit jointly against Dixie Greyhound Lines, Inc., and Teche Lines, Incorporated, for wrongfully causing his seizure, arrest and imprisonment. The case was tried to a jury, and at the close of the evidence for the plaintiff the court granted the defendants' motion for a directed verdict, and entered judgment accordingly.

In January, 1940, Dixie Greyhound Lines, Inc., and Teche Lines, Incorporated, operated passenger busses running to and from Jackson, Mississippi, on regular schedules. The two companies maintained and used the same terminal depot in Jackson, and used the same ticket agent, the same telephone, and other jointly maintained conveniences.

Atkinson was employed in a grocery store in the City of Jackson. He and his family lived approximately seven miles south of the city, and each day when his work was over he usually went to the bus depot and boarded the 8:15 bus for his home. He testified that he had been riding to his home on the bus almost every night for three months; that on January 27, 1940, he worked at the store from seven in the morning until eleven-thirty that night; that after closing the store, he took a bag of groceries which he had purchased and went to the coffee shop of a downtown hotel to eat supper; that he ate supper and then walked from the hotel to the bus station, arriving there about 1:15 A. M.; that he was not sure when the next bus left, but was under the impression that he could get a bus about 1:45 A. M.; that when he arrived at the station, he went directly to the ticket office; that he had the bag of groceries in one hand, and put his other hand in his pocket and drew out a one dollar bill with which to purchase his ticket; and that the agent on duty was busy writing. Atkinson inquired of the ticket agent, "What time does the bus go?" The agent glanced up and said, "You have plenty of time. You have until 4:30." Appellant waited a short time, and as the agent kept

writing he walked over and sat in one of the seats provided for waiting passengers. The waiting room contained more than fifty seats, and many of them were vacant at the time. Later on, Atkinson went upstairs to the balcony for the purpose of going to the men's lavatory. When he came out of the lavatory, he sat in one of the seats provided there for passengers.

Atkinson further testified that about two o'clock, and while he was sitting in one of the seats on the balcony, the ticket agent "comes by there and asks me what I was doing, what direction I was going in. I told him I was going south to Byron, and he asked me did I have a ticket. I said, 'No, I haven't got a ticket but I am ready to get one now.' He said, 'Well, you have until 4:30 in the morning to get it. The bus leaves at 4:30 in the morning. That is the next bus going South.' When he told me that, he turned away and just left me with the impression that I had until 4:30 the next morning to get my ticket."

About three o'clock in the morning two uniformed police officers came upstairs and began talking to a passenger who sat near Atkinson. The ticket agent came up and informed the officers that they were talking to the wrong man, and he then pointed to Atkinson and said that he was the one who had been loafing at the depot for about a week. The officers approached Atkinson and questioned him. Atkinson stood up, and as he attempted to pick up his sack of groceries, one of the officers seized him and the other officer searched him. He was told that he was under arrest, and the officers then led him down the stairs, through the waiting room, and ejected him from the station. After removing him from the station, the officers placed him in a car and took him to police headquarters. When Atkinson arrived at the police station, the two officers and the Desk Sergeant questioned him for several minutes. He was then placed in an adjoining room and held for two hours, and was released when an officer who knew him came in and identified him. Appellant then took his bag of groceries and walked back through the cold and the snow to the bus terminal. He found that the 4:30 bus has gone, and he then had to wait until about nine

o'clock that morning when he caught another bus and went home to his family.

The evidence is without dispute that the ticket agent called police headquarters and requested officers to come to the depot and eject the appellant. The ticket agent testified:

"Q. I believe you testified, did you not, that you had positive instructions from your employer that people should not stay in the depot with no obvious reason to be there at the station?

"A. That is right.

"Q. So it was discretionary with you as to whether or not you should call police headquarters and ask for assistance?

"A. Yes, sir.

"Q. To put people out?

"A. Yes, sir.

"Q. In other words, that was part of your duty as employe of the companies to see that people are put out when you think they are violating some city ordinance or some law?

"A. When there is just reason.

"Q. The officials of the company authorize you to do that?

"A. Yes, sir.

"Q. That is what you were doing on the occasion you called police headquarters to come to the depot and take charge of Lamar Atkinson?

"A. Yes, sir.

When the seizure and arrest of appellant was made at three o'clock in the morning, the night was intensely cold, with ice and snow covering the ground. It is clear that while Atkinson was in the depot, he was sober, and was deporting himself in a quiet and peaceful manner, *a* and that this conduct obtained until he was placed under arrest and removed from the station. Several persons were in the depot and saw the officers eject the appellant, and he testified that after his arrest he was questioned about the occurrence by a number of people; that he did not mention his having been arrested and put out of the station until

he was asked about it by different persons; that when he applied for work he was asked if he had ever been arrested; that he was humiliated; that he had never loafed about the depot of the defendant bus lines; and that he had never been arrested until this time.

(1, 2) The trial court erred in holding that as a matter of law the relationship of carrier and passenger did not exist between Atkinson and the defendant bus companies. Railroad and bus depots are established and maintained for the accommodation of passengers, and when an intending passenger avails himself of the convenience and presents himself in a proper manner and within a reasonable time before the arrival of his bus or train, "such person, while on the depot grounds or in the waiting room, is a passenger, and entitled to all the protection of a passenger." Metcalf v. Y. & M. V. R. R. Co., 97 Miss. 455, 52 So. 355, 356, 28 L. R. A., N. S., 311. Whether the passenger-carrier relationship to only one or more issues and the judgment is in other respects free from error, a reviewing court may, when remanding the cause for a new trial, whether by the court or a jury, limit the new trial to the issues affected by the error whenever these issues are entirely distinct and separable from the matters involved in other issues and the trial can be had without danger of complication with other matters * * *." American Jurisprudence, Vol. 3; State Life Ins. Co. of Indianapolis v. Hardy, 195 So. 714; Schuerholz v. Roach, 58 F. (2) 32; Gasoline Products Co. v. Champlin Refining Co., 283 U. S. 494; Moore's Federal Practice under the New Federal Rules, Vol. 3, page 3248; Federal Rules of Civil Procedure, Rule 59 (a), 1938 Ed. p. 125.

By its verdict the jury found (1) that plaintiff was in defendants' bus station as a passenger at the time he was arrested and was not a trespasser; (2) that he had committed no offense and that his arrest was wrongful; (3) that Billingsley was the agent of the defendants when he called in the police and was then and there acting within the line and scope of his employment; and (4) that defendants were liable for the acts of Billingsley and the police officers for the wrongful arrest and imprisonment of plaintiff.

From what we have said, it is patent that the court erred in refusing, under proper instructions, to submit to the jury the question of punitive damages, that is: Did Billingsley in and about the arrest and imprisonment of plaintiff act with such reckless disregard of the rights of the plaintiff as measured to wanton or willful misconduct? This is a jury question under the facts of this case. It will also be relevant to prove the financial worth of defendants. Whitfield v. Westbrook, 40 Miss. 320; Wagner v. Gibbs, 80 Miss. 63.

The judgment appealed from is affirmed on cross appeal. It is also affirmed on direct appeal except as to the issue of punitive damages. On that issue, it is reversed and the cause remanded to the district court for trial de novo, and such further proceedings as are not inconsistent with this opinion.

WALLER, Circuit Judge, dissenting:

I do not believe that the evidence in this case reveals any facts that would justify the submission of an issue of punitive damages to the jury, and I therefore dissent.

McCORD, Circuit Judge:

This is the second appeal of this case. The evidence on the first trial and as found in this record is substantially the same. A full summation of the evidence can be found in Atkinson v. Dixie Greyhound Lines, et al., 125 F. (2d) 237. No good purpose can be served by setting out the facts at length.

Upon remand the case was tried to a jury and recovery limited to compensatory or actual damages. The court declined to submit to the jury the question of punitive damages, and the jury returned a verdict for plaintiff for actual damages in the sum of $500. The plaintiff appealed on the one ground that the court erred in refusing to submit to the jury the question of whether punitive damages should be awarded. The defendants have cross-appealed.

The evidence of the defendants showed that plaintiff entered the bus station of defendants at Jackson, Mississippi after midnight and upon request failed and refused

to purchase a ticket, and upon his refusal two police officers were called in and plaintiff further refused to purchase a ticket and he was then arrested and ejected from the station and removed to police headquarters. The jury declined to follow this evidence. The jury followed the evidence of the plaintiff. The plaintiff's evidence showed that he worked in a grocery store in Jackson, Mississippi on a Saturday in January, 1940 until 11:30 that night, having worked over sixteen hours; that when he left his work he went to a coffee shop and ate supper and then entered the defendants' bus station at about 1:15 in the morning; that he went immediately to the ticket window to purchase a ticket to his home at Byron, which was about seven miles south of Jackson, the price of the ticket being 26 cents; that he had a large sack of groceries in one hand and in the other a one dollar bill with which to purchase the ticket; that the agent was busy writing and upon being advised that plaintiff would purchase a ticket to Byron informed him that the bus did not run in that direction until 4:30 that morning; that he made no move to wait upon plaintiff and thereupon plaintiff took a seat in the waiting room; that later he went up to the balcony to the men's toilet and then seated himself in a seat on that floor which was provided for passengers; that later on Billingsley, the agent of the defendants, came to the plaintiff and asked him where he was going and when told said, "You have until 4:30" and turned away; when plaintiff made an effort to again purchase a ticket the agent said, "You have until 4:30" and plaintiff kept his seat.

Later two police officers who had been summoned by Billingsley entered the bus station and Billingsley pointed out the plaintiff and informed the police that plaintiff had been loafing in the depot for about a week; the officers thereupon seized plaintiff and arrested and searched him and removed him from the bus station to the police headquarters where he was held for about two hours and then released and given his bag of groceries and he walked back through the snow to the station and found that his bus had gone; he waited until 9 o'clock when he boarded another bus and returned to his home. The evidence further showed that plaintiff had been working at Jackson for three months and

had been buying tickets at the bus station and riding to his home nearly every day during that time; that he had never been arrested before; that he was sober on the occasion and presented himself at the station in a proper manner; that his deportment and demeanor at all times were correct and good; that he was a passenger of defendants as he was in their bus station waiting for his bus; and he was humiliated since many people knew of his arrest and imprisonment and that it would militate against him in the event he sought new employment.

The evidence is without dispute that Billingsley was the agent of the defendants and was at the time of the arrest in charge of the bus station and acting within the scope and line of his employment.

The witness, Emory, who testified for the defendants, was permitted to go entirely out of the record. The questions propounded to him, in the main, called for conclusions and brought forth answers which were erroneous and prejudicial. This witness was permitted to further testify that "If he refused to buy a ticket, he (the agent) has instructions to call the police * * * It is his duty to call the police, and we abide by the police decision."

The defendants may not escape liability for the wrongful acts of their agent or by passing responsibility to the police. If the agent and police were wrong, then their wrongs became the wrongs of the defendants. 35 A. L. R. 645; King v. U. C. R. R., 13 So. 824; Bacon vs. Bacon, 76 Miss. 458; Howell v. Vierner, 179 Miss. 872; A. & V. Ry. Co. v. Kuhn, 78 Miss 114; Laster v. Chaney, 177 So. 524.

Punitive damages: To authorize the infliction of punitive damages, the wrongful act complained of must be either intentional, or result from such gross disregard of the rights of the complaining party as amounts to willfulness on the part of the wrongdoer. Illinois Central R. Co. v. Ramsay, 127 So. 726; Chicago, St. L. & N. O. R. R. Co. v. Skurr, 59 Miss. 456; Mississippi & T. R. R. Co. v. Gill, 66 Miss. 39; New Orleans & N. E. R. R. Co. v. Martin, 140 Miss 410.

"Punitive damages may be recovered not only for willful and intentional wrong, but for such gross and reckless negligence as is equivalent to such a wrong. A spirit of wantonness and recklessness is at war with good faith. An act

done in such a spirit oftentimes is just as harmful as if prompted by malice." Neal v. Newburger, 123 So. 863; Edward Hines v. Imperial Naval Stores Co., 101 Miss. 802; Godfrey v. Meridian L. & R. R. Co., 101 Miss. 565; Vicksburg Waterworks v. Dutton, 99 Miss. 209.

That a case of false arrest or malicious prosecution in Mississippi can be such as to call for the infliction of punitive or exemplary damages is not longer in doubt. When an arrest has been made and imprisonment imposed and the evidence shows no legal grounds therefor, such conduct has been characterized as such gross wrong to evince a wanton or willful disregard of the rights of others, and if so, then the question of punitive damages under proper instruction by the court becomes a question for the jury. Laster v. Chaney, 177 So. 524; Bounds v. Watts, 131 So. 804; Illinois Central v. Ramsay, 127 So. 725; 25 C. J. page 551, Par. 161; Southern Railway Co. v. Hall, 96 So. 73; Electric Power Co. v. Wynne, 149 Va. 882; Stewart v. Sonnenborn, 96 U. S. 187; Taggard v. Patterson, 181 So. 137.

"It is now well established, notwithstanding doubt expressed in some earlier cases as to the common-law power of a reviewing court to limit issues when ordering a new trial, that when error exists as exists, depends, not upon the purchase of a ticket, but upon all the facts and circumstances of the particular case. 10 C. J., Carriers, 1039, 1040-1042; 13 C. J., Carriers, 554, et seq; Thomas v. Bush, Mo. App., 200 S. W. 301; Kidwell v. Chesapeake & O. Ry. Co., 71 W. Va. 664, 77 S. E. 285, 43 L. R. A., N. S., 999.

(3, 4) Viewing the evidence, as we must, in the light most favorable to the appellant, it is clear that Atkinson presented himself at the station in a proper manner; that he approached the ticket agent with money in his hand to buy a ticket; that the agent told him the bus didn't leave until 4:30 A. M.; that he took this statement of the agent to mean that he could remain at the depot until that time; and that upon being questioned by the agent at a later time he expressed a willingness to buy a ticket, and the agent told him he had until 4:30 to get one. Cf. St. Louis Southwestern R. R. Co. v. Griffith, 12 Tex. Civ. App. 631, 35 S. W. 741. It was for the jury to weigh the evidence and ascertain whether At-

kinson was a passenger, whether he had presented himself in a proper and reasonable manner, and whether he was entitled to sit in the bus depot and wait for the bus. The testimony clearly made a case for the jury, and the court erred in directing a verdict for the defendants.

(5) The appellee contends that from the evidence in the case it is apparent that the plaintiff could not have expected to recover as much as $3,000, and that, therefore, the federal court is without jurisdiction. The sum claimed in the pleadings of the appellant is far in excess of the minimum jurisdictional amount, and it does not appear that his claim was colorable or otherwise made in bad faith. The requirements as to jurisdiction were met. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U. S. 283, 58 S. Ct. 586, 82 L. Ed. 845.

The judgment is reversed and the cause remanded for a new trial.

Reversed and remanded.

Section 7856, Mississippi 1942 Code, is in the following language:

> "How Rooms To Be Kept Open.—Every railroad shall keep rooms open for the reception of passengers at all passenger stations at least one hour before the arrival, and one-half hour after the departure, of passenger trains; and all reception rooms shall be made comfortable, and shall be kept in a cleanly and decent condition, and properly heated when necessary, and properly lighted at night. The agent or person in charge shall preserve order, and, if necessary, eject any person whose conduct is boisterous or offensive."

Section 2411, Mississippi 1942 Code, is in the following language:

> "Trespass—Going Upon Inclosed Premises of Another.—If any person shall go upon the inclosed land of another without his consent, after having been notified by such person or his agent not to do so, either personally or by published or posted notice, or shall remain on such land after a request by such person or his agent

to depart, he shall, upon conviction, be fined not more than fifty dollars for such offense. The provisions of this section shall apply to land not inclosed where the stock law is in force."

(3806)